

OFFICE OF THE ATTORNEY GENERAL  
BUREAU OF SECURITIES  
STATE OF NEW JERSEY  
153 HALSEY STREET  
P.O. BOX 47029  
NEWARK, NEW JERSEY 07101

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IN THE MATTER OF:

A.G. Edwards & Sons, Inc.  
(now Wachovia Securities, LLC)

CRD #19616  
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**CONSENT ORDER**

BEFORE VINCENT J. OLIVA, BUREAU CHIEF

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities ("Bureau Chief") by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. ("Securities Law"), and after investigation, review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief has determined that civil monetary penalties and additional monetary and other remedies be assessed against Wachovia Securities, LLC (as the acquirer of A.G. Edwards & Sons, Inc.) ("Wachovia Securities").

**WHEREAS**, the New Jersey Bureau of Securities ("Bureau") is the State agency with the responsibility to administer and enforce the Securities Law; and

**WHEREAS**, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary or appropriate in the public interest or for the

protection of investors and consistent with the purposes fairly intended by the provisions of the Securities Law; and

**WHEREAS**, A.G. Edwards & Sons, Inc. (“AGE”) was a broker-dealer registered with the Bureau; and

**WHEREAS**, the Bureau has conducted an investigation into certain activities occurring in the Short Hills, New Jersey branch office of AGE during the period of March 2004 through May 2006; and

**WHEREAS**, AGE has voluntarily made, and Wachovia Securities LLC, its acquirer, will make further, remunerations to certain customers, and AGE and Wachovia Securities has cooperated with the Bureau in its investigation; and

**WHEREAS**, Wachovia Securities and the Bureau Chief wish to resolve these issues without the expense and delay that formal administrative proceedings would involve; and

**WHEREAS**, Wachovia Securities consents to the form and entry on this Consent Order without admitting or denying the allegations set forth herein. Accordingly, Wachovia Securities waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief’s findings and conclusions of law in this Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and
- b. To seek judicial review of, or otherwise challenge or contend, the validity of this Consent Order; and

**WHEREAS**, Wachovia Securities agrees that for the purposes of settling this matter, or any future proceedings by the Bureau, this Consent Order shall have the same

effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 et seq.; and

**WHEREAS**, this Consent Order concludes the investigation by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against AGE and Wachovia Securities for the conduct described herein.

### **FINDINGS OF FACT**

The Bureau Chief makes the following findings of fact:

1. At all relevant times AGE, with its principal place of business at One North Jefferson Avenue, St. Louis, Missouri, was a broker-dealer registered with the Bureau. Effective October 2007, after the events at issue in this investigation, Wachovia Securities and AGE merged and Wachovia Securities acquired the retail brokerage and financial advisory assets of AGE. The assets of AGE were contributed to Wachovia Securities on January 1, 2008.
2. Richard Barber (CRD #1636416) ("Barber") was registered as an agent of AGE with the Bureau September 2003 through December 2007, and has been registered with the Bureau as an agent of Wachovia Securities since January 2008. Barber served as branch manager for the AGE branch office located at 150 J.F.K. Parkway, Short Hills, New Jersey (the "Short Hills Branch") from September 2003 to June 2008, and was responsible for the supervision of agents operating at that location.

3. Michael K. Jones (CRD #730365) ("Jones") was registered as an agent of Citigroup Global Markets Inc. (CRD #7059) ("Citigroup") with the Bureau from July 1993 through March 2004, when he was permitted to resign from that firm. Since his resignation from Citigroup, Jones has not been registered with the Bureau in any capacity.
4. Jerette L. Lerner (CRD #2336016) ("Lerner") was registered as an agent of AGE with the Bureau from March 2004 through May 2006. Lerner was employed in the Short Hills Branch of AGE under the supervision of Barber. She was previously employed as an agent of Citigroup with the Bureau from June 1996 through March 2004. While at Citigroup, Jones and Lerner operated in part as a production team, managing certain accounts together. Within the production team, Lerner was viewed as a junior broker to Jones, who maintained a larger book of business and made investment recommendations to Lerner, which she acted upon.
5. In or around the fall of 2003, the AGE Short Hills Branch sought to hire Jones as an agent of AGE.
6. In or about February 2004, Jones met with Short Hills Branch Manager Richard Barber and an AGE regional manager about the possibility of employment. Also at this time, Jones' Citigroup associate, Lerner, was introduced to Barber and the regional manager. The goal of the meeting was to determine whether or not Jones and Lerner could be hired as a production team of agents for AGE or if either could be hired separately.
7. In March 2004, Jones was permitted to resign from Citigroup amid turmoil from a failed short selling strategy.

8. AGE declined to hire Jones for the Short Hills Branch due to concern over customer complaints and the potential of future regulatory issues. At Barber's request, Lerner was hired as an agent for AGE in the Short Hills Branch in March 2004.
9. Commencing with Lerner's employment with AGE in March 2004, Barber allowed Jones to occupy a desk in Lerner's office at the Short Hills Branch, despite AGE's decision to deny employment to Jones.
10. In addition to the use of a desk in Lerner's office, Barber permitted Jones access to an extra telephone line which had previously been used by the former branch manager as a facsimile line. Jones used this line to access an outside internet connection. AGE's clients were able to call the main telephone number at the Short Hills Branch and have the receptionist connect them to Jones through his own extension. Jones provided his own computer and used the internet connection to communicate, through email, with clients of Lerner.
11. Barber provided Jones with the above described accommodations, in part, to facilitate the referral and transfer of both Jones' and Lerner's Citigroup client accounts to AGE.
12. Jones maintained regular business office hours during the workweek in the Short Hills Branch.
13. Barber did not supervise Jones' activities when Jones was present in the Short Hills Branch.
14. Jones met and spoke with Lerner's clients in the offices of the Short Hills Branch. In fact, certain clients believed Jones was an agent of AGE. Barber knew Jones

was present in at least one meeting between an AGE client and Lerner in the Short Hills Branch.

15. Jones accepted orders from clients, despite lacking official registration through AGE. These orders were executed by Lerner through the AGE system.

16. Jones had access to copies of AGE client statements, trade confirmations, positions, and cash runs.

17. Jones received correspondence from AGE clients addressed to him at AGE and the Short Hills Branch office address. The correspondence included new account opening documentation, account information, and Christmas cards.

18. For his securities activities and dealing with AGE clients, Jones received a portion of Lerner's commissions in the form of loans which were created by Lerner and Jones outside of the Short Hills Branch office.

19. At no time during Jones' presence in the Short Hills Branch did Barber place any special supervision on Jones or Lerner.

20. In or around the summer of 2004, Barber became increasingly uncomfortable with Jones' presence in the Short Hills Branch. In or around September 2004, Barber told Jones to leave the premises of the Short Hills Branch once and for all. Jones complied.

21. Subsequent to Lerner's termination from AGE, Barber learned that Lerner was taking files from the Short Hills Branch. Jones occupied temporary office space on the first floor of the building in which the Short Hills Branch was located and that Lerner delivered documents to Jones at that location. This location served as office space for MKJ Capital, an investment consultancy run by Jones.

22. After his expulsion from the Short Hills Branch, Jones hand wrote and delivered weekly investment recommendations to Lerner. These recommendations are consistent with trades made in Lerner's client accounts.

23. Jones made direct and indirect recommendations to some AGE clients that were unsuitable for their investment profile and resulted in over concentration of securities. AGE clients traded on these recommendations. As a result, some clients incurred significant losses in their accounts.

24. In or around March 2006, assistant branch manger Cheryl Costa of the Short Hills Branch (CRD #2124335) ("Costa") initially discovered, and was instructed by Barber to review, a series of unsolicited trades for the same stock issue for certain of Lerner's clients. Costa's review of the trading activity disclosed that certain trades executed by Lerner were unauthorized. On May 19, 2006, as a result of these unauthorized trades, Barber terminated Lerner's employment with AGE.

25. During Lerner's two year employment at the Short Hills Branch, activity in her client accounts generated approximately \$850,000 (exclusive of margin interest) in revenue for the AGE.

26. By failing to prevent Jones from accessing the Short Hills Branch office, Barber created an environment where violations were likely to occur and failed to put in place reasonable supervisory procedures to detect and prevent conduct in violation of the Securities Law.

27. Wachovia Securities is liable for conduct occurring at AGE under the terms of the acquisition of AGE as described above.

### **CONCLUSIONS OF LAW**

Solely for the purpose of this Consent Order, and without admitting or denying the allegations set forth herein, Wachovia Securities (as acquirer of AGE) consents to the Bureau Chief making the following conclusions of law:

1. In connection with allowing an unregistered person to maintain a presence in the Short Hills Branch and provide investment advice to clients of AGE, and by failing to prevent unsuitable trading strategies to be recommended to those clients, AGE failed to reasonably supervise, and establish and enforce procedures necessary to detect and prevent such conduct, in violation of its duties under N.J.S.A. 49:3-58(a)(2)(xi).
2. The activities set forth herein are grounds, pursuant to N.J.S.A. 49:3-58(a)(1) and N.J.S.A. 49:3-58(a)(2)(xi) for the initiation of administrative proceedings; and further, pursuant to N.J.S.A. 49:3-70.1, to assess a civil monetary penalty, and pursuant to N.J.S.A. 49:3-67, to impose such other appropriate remedial measures as may be necessary in the public interest.

### **REMEDIAL MEASURES**

1. In June 2008, Wachovia Securities relieved Richard Barber as manager of the Short Hills Branch and placed him in a non-managing agent position in another branch office of the firm.
2. AGE and Wachovia have conducted an internal review of the Short Hills Branch Office with respect to this matter, and have fully cooperated with the Bureau in its investigation.



3. To date, AGE or Wachovia Securities has settled with and made certain remunerations to approximately seven customer accounts serviced by Lerner during her employment with AGE. These payments to customers totaled approximately \$267,000.
4. Wachovia Securities will make additional remunerations to certain customers, in accordance with the ordering paragraphs below.

**ORDER**

NOW THEREFORE, it is on this 6<sup>th</sup> day of OCTOBER 2008,

ORDERED that, within thirty (30) days of the entry of this Consent Order, Wachovia Securities shall offer no less than \$120,000 as additional restitution to compensate for the losses of certain customers affected by the conduct described above; and it is

FURTHER ORDERED that, pursuant to N.J.S.A. 49:3-70.1, Wachovia Securities is assessed and shall pay a civil monetary penalty in the amount of \$400,000.00, due and payable upon entry of this Consent Order to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6<sup>th</sup> Floor, Newark, New Jersey 07102, or to be mailed to "Bureau of Securities," P.O. Box 47029, Newark, New Jersey 07101. The civil monetary penalty payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

Wachovia Securities, LLC (as the acquirer of A.G. Edwards & Sons, Inc.) hereby consents to the form and entry of this order without admitting or denying the allegations, findings and conclusions of law set forth herein.

WACHOVIA SECURITIES, LLC

By: \_\_\_\_\_

Name: Douglas L. Kelly

Title: Senior Vice President

DATED: 10/3/08

NEW JERSEY BUREAU OF SECURITIES

By: \_\_\_\_\_

Vincent J. Oliva  
Vincent J. Oliva  
Chief, Bureau of Securities

DATED: 10/6/08